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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 August 1998, at 3 p.m.

Chairman: Mr. FAN Guoxiang
(Vice-Chairman)

later: Mr. GUISSÉ (Chairman)

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In the absence of Mr. Guissé, Mr. Fan Guoxiang, Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

HUMAN RIGHTS OF INDIGENOUS PEOPLES:

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

(agenda item 7) (continued) (E/CN.4/Sub.2/1998/15 and 17)

1. Mr. KAISIÈPO (Survival International) said he welcomed the fact that the Working Group on Indigenous Populations had taken steps to start a dialogue with the private sector; it was important to establish a relationship based on mutual respect and understanding. He supported the suggestion that the dialogue process should be entrusted to Mrs. Daes.

2. He urged that the definition of "land" should not be restricted but should include also marine resources: the sea was of economic, environmental, traditional and cultural importance to many indigenous peoples, and its resources were vital for their development and survival.

3. Ms. PEREZ DUARTE (Observer for Mexico) said that, having recognized that diversity was the source of its cultural richness, her country was slowly but surely transforming itself into a State in which pluralism and productive coexistence were celebrated. The poverty, inequality and marginalization in which much of the indigenous population lived resulted from mistaken efforts in the past to create a homogeneous society. The claims of indigenous peoples to land, administration of justice, services, infrastructure, political rights and self-determination had been acknowledged and a new alliance between indigenous peoples and the State was being forged. Indeed, the President had put before Congress a proposal for a social pact between the indigenous peoples, civil society and the State to improve every aspect of those peoples' living standards. Two further bills were also before Congress.

4. The individual states of the Federation were undertaking similar reforms. Campeche had reformed its Constitution to guarantee respect for cultural diversity and non-discrimination against indigenous peoples. Oaxaca had adopted, in May 1998, the Rights of the State's Indigenous Peoples and Communities Act, which provided for self-determination and self-government for indigenous communities and committed the state to protecting them and respecting their territory and legal systems. In July 1998, Quintana Roo had adopted a similar Act, setting out the state's obligations and enshrining the indigenous peoples' right to establish their own social, economic and political organization.

5. In Chiapas, the tension in two of the nine regions making up that state had led to legislative initiatives of a different nature: the government had adopted a State Agreement for Reconciliation in Chiapas and set up the State Development and Reconciliation System, one aspect of which was to hand power back to local communities.

6. The Federal Government had also taken action in other fields: it was extending health education, improving the road network and promoting economic growth and employment by helping indigenous communities to help themselves. Regarding the disgraceful situations described earlier in the day, her delegation would make a statement under agenda item 9. Mexico was strongly committed to the creation of a new social pact whereby, through dialogue and negotiation, historic difficulties could be overcome and a new dynamic of national development set in train.

7. Mr. Guissé took the Chair.

8. Mr. WEISSBRODT said that the Special Rapporteur had followed up her excellent preliminary working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17 and Corr.1) by a less ambitious progress report (E/CN.4/Sub.2/1998/15), detailing a few developments that had occurred during the past year. Mrs. Daes had contributed to an understanding of the relationship between indigenous peoples and their lands in all its social, cultural, spiritual, economic and political dimensions. She had also stressed the significance of the collective and inter-generational nature of the relationship, which was reflected in the fact that the continuing dispossession of lands went hand in hand with an alarming decline in population among indigenous people.

9. It was clear that the survival of their culture depended on guaranteeing them the lands and resources needed for sustainable economic development and a degree of self-sufficiency. Mrs. Daes did, however, point to some hopeful indications of increasing recognition for indigenous land rights, notably in the preliminary decisions and friendly settlements of the Inter-American Commission on Human Rights regarding indigenous land rights in Nicaragua and Paraguay. He looked forward to her final working paper, for which her mandate should, if necessary, be extended.

10. As for the final report of the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, which had been circulated informally, he noted that Mr. Alfonso Martínez had analysed diverse cases in about 20 countries and provided useful information for the understanding of some of the issues in a complex field. The report concentrated on a few countries in North, Central and South America, northern Europe and the Pacific. It briefly mentioned the situation in Botswana, the Indian subcontinent, Japan, Kenya and Sierra Leone but, with those exceptions, did not cover Africa or Asia because, according to his definition of indigenous peoples, he had apparently found no such peoples in those continents.

11. He regretted that the Special Rapporteur had been unable to accept the suggestion that a larger number of States should be included; indeed, he had limited his study even more explicitly by announcing a very restrictive definition of indigenous peoples, a definition that had not been accepted at the most recent session of the Working Group on Indigenous Populations.

12. The report's conclusions and recommendations were, however, generally modest and sensible. He agreed with the report as to the need for respect of treaties and other agreements between States and indigenous peoples, including the application of the doctrines of customary international law.

13. He hoped that the Special Rapporteur would take into account for the formal publication of the report the comments made in both the Working Group and the Sub-Commission, although it might no longer be possible at such a late stage to include the missing continents and countries. Mr. Alfonso Martínez had frequently acknowledged the great difficulties he had experienced in dealing with a very substantial task. It might be better for him to note the omission of some situations rather than to impose a severely restrictive, and possibly misleading, definition of indigenous peoples. The alternative would be to prolong the study still further, but, as an art critic had once said, "no great work of art is ever completed, but only abandoned".

14. Mr. ALFONSO MARTÍNEZ welcomed Mr. Weissbrodt's comments; he only regretted that the unavailability of the document in French and Spanish prevented other experts and organizations from commenting fully. The study had indeed been beset with difficulties, some of a personal nature but mostly due to the fact that the Centre for Human Rights had not been able to guarantee a standing consultancy, as it had for other studies. His original mandate had been extremely focused, but with the passage of time the scope of the study had broadened to include the background to treaties and an historical analysis of the gradual but relentless dispossession of ancestral lands suffered by indigenous peoples and its consequences.

15. He had had to limit the number of countries to which extensive treatment was given, partly because primary and secondary sources were often hard to come by or, as in the case of the northern part of the territory of the former Soviet Union, completely unavailable. He denied, however, that he had been over-selective; he had merely differentiated between countries with colonial Governments and those with Governments made up of non-indigenous people.

16. At no time had he denied the existence of indigenous peoples in Africa and Asia. It was merely that the working definition of "indigenous peoples" was unacceptable, since it excluded other nations or ethnic groups sharing the same territory. A nationhood was often shared between several States, a legacy from the colonial past. The term "indigenous" was an outmoded one; it had been dreamed up by non-indigenous peoples to assert their supremacy over the original peoples of a given territory. In fact, all the peoples in Africa and Asia were indigenous, both those in power and those who felt deprived of their rights within a given nation State. The issue of so-called "indigenous peoples" should thus be viewed from another perspective closer to that of the Working Group on Minorities.

17. He was aware that his views were controversial, but debate was only to be welcomed. He, for one, was not ashamed of expounding a dissident or minority view. Expanding upon Mr. Weissbrodt's parallel with a work of art, he pointed out that artists like Michelangelo and Picasso had not been appreciated at first.

18. Two delegates at the previous meeting had complained of the lack of transparency of the Working Group on Indigenous Populations. However, the same methods of work had always been followed, which involved listening to all views before reaching conclusions. Two other delegations had reproached the Working Group for deciding to postpone acceptance of the invitation by the United Nations Educational, Scientific and Cultural Organization (UNESCO, to meet in Paris the previous year. That decision had been taken at the request of 17 indigenous organizations which had addressed a letter to Mrs. Daes pointing out that there was no possibility of reproducing in Paris the established lodgings and logistic facilities habitually made available to indigenous representatives by the Geneva Documentation Centre of Indigenous Peoples (doCip). The visit had been postponed, not cancelled.

19. Regarding the agenda for the following year, it had been decided to focus on the fundamental issue of land rights in view of the desire in some quarters to reduce indigenous issues to an educational and cultural question. Education, culture and health would not, of course, be neglected.

20. Although the proposed permanent forum for indigenous peoples had received much support, the Working Group on Indigenous Populations, namely, the only permanent forum which already existed, should not be disbanded too hastily in favour of a body whose parameters still remained vague. Crucial questions relating to the functioning, funding and membership of the proposed body had still to be decided. As two Governments had clearly indicated at the meeting with the Bureau of the Commission, it would not be financially possible for such a forum to coexist with the Working Group.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (E/CN.4/1998/18)

21. Mr. EIDE, introducing the report of the Working Group on Minorities on its fourth session (E/CN.4/Sub.2/1998/18), said that deliberations within the Working Group had focused on the need to improve minority-majority relations through practical realization of the Declaration on the Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities. Two non-governmental organizations (NGOs), Minority Rights Group and International Service for Human Rights, had organized a seminar on human rights and the media held immediately prior to the session and their recommendations were to be found in annex I to the report.

22. The Working Group had discussed a number of issues including a "Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (E/CN.4/Sub.2/AC.5/1998/WP.1). The discussions had focused on situations in various parts of the world, on approaches at the bilateral, regional and global levels and on the role of United Nations bodies, specialized agencies and NGOs; the report contained a summary of the issues covered.

23. The Sub-Commission was referred in particular to the Working Group's examination of possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments (paras. 92 to 95) and issues relating to the forcible displacement of populations (para. 96).

24. Members of the Working Group had agreed to prepare working papers on: conflict prevention in situations involving minorities, the existence and recognition of minorities, multicultural and inter-cultural education, citizenship and the rights of non-citizens and universal and regional mechanisms for minority protection.

25. The Working Group had also recommended the establishment of a voluntary fund to enable a greater participation of minority representatives at its sessions. The Declaration should be translated into minority languages and promoted more widely, especially in the developing world, where many people were unaware of its existence. Further conclusions and recommendations were contained in paragraphs 102-111 of the report.

The meeting rose at 4.25 p.m.